

REMARKS

Claims 1-3, 5-8, and 10-21 are pending in the application. Claims 13-16, 18, and 19 are withdrawn from consideration. Of the claims examined on the merits, only claim 1 is independent.

Claims 1-3, 6-8, 10-12, and 20 stand rejected under 35 U.S.C. §102(b) as anticipated by Cope.

Claim 1 has been amended to better define the keyway on the swivel and to better define what swivel means. Support for the amendment to claim 1 can be found at page 11 of the specification as filed. The suture anchor device disclosed by Cope is not a swivel as that term is defined in the specification and now in claim 1. Moreover, the device disclosed by Cope does not have a keyway as that term is defined in the specification and now in claim 1.

Recently, the Federal Circuit confirmed that when rejecting a claim, the Examiner must give the claim language the meaning that is provided by the applicant's specification and not the broadest reasonable interpretation. In re Scott E. Johnston, 05-1321 (Jan. 30, 2006), citing Phillips v. AWH Industries, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*). Thus, it is submitted that the Examiner's rejection of claim 1 as anticipated by Cope is contrary to law and cannot be sustained. This argument is made even stronger by

the amendment to claim 1. Further, Cope does not suggest the swivel and keyway claimed in claim 1.

Claims 2, 3, 6-8, 10-12 and 20 depend either directly or indirectly from claim 1 and therefore, the argument made above regarding claim 1 applies to these claims as well. In addition with regard to claims 11 and 12, there is no mention of a pushrod in Cope and it is clear from Figs. 16 and 17 that only one of the strings 70 passes through the tube 130 whereas the tube 40 does not. The Examiner has not addressed claim 20. Thus, it can be assumed that including claim 20 in this rejection was a mistake.

Claims 1-3, 5-8, 10-12 and 20 stand rejected under 35 U.S.C. §102(b) as anticipated by Cragg. Cragg discloses a medical device anchoring system. The Examiner states that the anchor 14 in Cragg reads on the swivel claimed in claim 1. However it is not a swivel and it does not have a keyway as those terms are defined in the instant specification and now in amended claim 1. Thus, the legal arguments made above regarding Cope and claim 1 apply to this rejection as well.

Claims 2, 3, 5-8, 10-12 and 20 depend either directly or indirectly from claim 1 and therefore, the argument made above regarding claim 1 applies to these claims as well. In addition, with regard to claim 11, the Examiner is mistaken regarding the identity of the pushrod in Cragg. As to claim 12, the fact that something is capable does not make it anticipated and this comment applies to all of the rejections which the Examiner bases on capability. This is analogous to arguing that something is anticipated because it is

possible. It is not a valid argument either legally or logically. The Examiner has not addressed claim 20. Thus, it can be assumed that including claim 20 in this rejection was a mistake.

Claims 1, 2, 5-8, 10-12, 17 and 20 stand rejected under 35 U.S.C. §102(b) as anticipated by Cerier. Cerier discloses a suture anchor and driver assembly. The Examiner states that the anchor 92 in Cerier reads on the swivel claimed in claim 1. However it is not a swivel as that term is defined in the instant specification and now in amended claim 1. Thus, the legal arguments made above regarding Cope and Cragg regarding claim 1 apply to this rejection as well. In addition, the strings in Cerier are not arranged as claimed in claim 1.

Claims 2, 5-8, 10-12, 17 and 20 depend either directly or indirectly from claim 1 and therefore, the argument made above regarding claim 1 applies to these claims as well. In addition, if the Examiner interprets the anchor 92 as being substantially cylindrical to reject claim 2, then it cannot be considered to have a reduced diameter portion to reject claim 5 which depends from claim 2. To do so would require interpreting the three ridges 62 as a cylinder which they clearly are not. Under any definition and certainly not as that term is used in the instant specification. With regard to claims 11, 12 and 17, there is no pushrod in Cerier. What the Examiner refers to as a pushrod is a passageway or channel. The Examiner has not addressed claim 20. Thus, it can be assumed that including claim 20 in this rejection was a mistake.

Claim 21 stands rejected under 35 U.S.C. §103(a) as obvious over Cope or Cragg or Cerier in view of Pedlick. Since claim 21 depends from claim 20 which depends from claim 21, the arguments made above regarding the applicability of Cope, Cragg, and Cerier apply to this rejection as well. In addition, the wedge shaped suture anchor of Pedlick does not have two different colored lengths of string attached to it as claimed in claim 21. Pedlick teaches a suture anchor coupled to a colored suture so that the suture can be distinguished from sutures coupled to other anchors.

In light of all of the above, it is submitted that the claims are in order for allowance, and prompt allowance is earnestly requested. Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,



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